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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,801	02/25/2004	Marco Ronconi	242/9-1915	3338

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EXAMINER

NASH, BRIAN D

ART UNIT PAPER NUMBER

3721

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/786,801	Applicant(s) RONCONI, MARCO	
	Examiner Brian Nash	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7 and 8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,2,5,7 and 8 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner's Comments

1. This action is in response to applicant's amendment received 7/21/2005. Applicant amended claims 1-2, 5, 7-8 and cancelled claims 3-4 and 6. The pending claims are now 1-2, 5 and 7-8.
2. Applicant's amendments have also remedied the objections the specifications and the rejections made under 35 USC 112.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,304,349 to Novak et al. Novak et al disclose the same invention including a pneumatic gun having a handle (24), a box-like container, i.e. magazine (34) provided with a sliding flap (72,74,76), a body having a working head (78) coupled to a complementary end head (80) of the magazine and forming an opening, i.e. firing channel (82) for the passage of fastener elements; the pneumatic gun comprises a guide (32) that runs from the working head to the handle and which is coupled slidingly so as to allow a manual translational motion of the magazine from a

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first, active (engaged) position wherein the working head is adjacent to the end head, to a second, non-active (disengaged) allowing access to the firing channel (see column 4, lines 20-46);

and the guide is arranged substantially at right angles to the working head and has a base portion (90) that includes longitudinal slots (122,124) along which the magazine slide assembly (112) is slidingly engaged with track (74) of the fastener driver (see column 6, lines 1-40, Figs. 6-9);

and wherein the guide is provided with means (128) for manual locking and release of the magazine, the locking and release means having a releasable safety closure (130) for preventing translational motion of the magazine and accidental disengagement from the guide;

the safety closure having an insert (138) detachably engaged in a respective pocket of the guide (pocket not referenced, see area surrounding 138 in Fig. 6) for abutting against a retention protrusion (100) (see Figs. 4 and 6) such that in order to produce translational motion of the magazine with respect to the guide or to extract the magazine completely, the insert (138) must be removed from the pocket;

and wherein safety closure of the locking and release means forms a lever that is pivoted having a first end portion for actuation and a second end portion that forms a sort of beak (not individually referenced, see Fig. 6) that abuts against a contoured tooth, i.e. the retention protrusion (100) that is equivalently monolithic with the magazine, an elastic means (136) between the first end portion and the guide, and a lever, i.e. the first end portion, manually rotatable for locking the sliding of the magazine;

and wherein the guide is detachably connected via screw means (100, see Fig. 1, 7) to an extension (30) of the handle.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,304,349 to Novak et al. As discussed above, Novak et al disclose the invention substantially as claimed, but do not explicitly show a longitudinal slot of the guide to have a substantially T-shaped transverse cross-section. However, Novak et al do show a base portion (90) that includes longitudinal slots (122,124) along which the magazine slide assembly (112) is slidably engaged with track (74) of the fastener driver. The shape of longitudinal slot of applicant's invention is not imperative to how it performs and it would have been an obvious matter of design choice for one having ordinary skill in the art to provide a longitudinal slot of a different shape, a T-shape in this instance, since applicant has not disclosed that one shape over another solves any stated problem or is for any particular purpose and it appears that the nail gun and sliding engagement between the guide and magazine would perform equally well with either design choice.

Response to Arguments

7. Applicant's arguments filed 7/21/2005 have been fully considered but they are not persuasive. Applicant contends, *inter alia*, that Novak et al do not perform the same function as the claimed invention. Examiner acknowledges applicant's position; however, a reference is

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deemed to properly anticipate a claim when all the recited limitations are disclosed therein. In this instance, Novak et al clearly show all the recited structural limitations including a locking and release means having a releasable safety closure. While it is noted that the device of Novak et al does not perform the same function as applicant's invention, specifically that the safety closure has a means for stopping the stroke of the magazine, it is deemed that the claims are not restrictive to such device.

For the reasons above, the grounds for rejection are deemed proper.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467.

The official fax number for this Group is: 571-273-8300

Brian Nash
9/14/2005


SCOTT A. SMITH
PRIMARY EXAMINER